

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Virginia

ORDER

This matter comes before the Court upon motion of the United States with the concurrence of the defendant, by his counsel. The government has in its possession electronic media that was imaged on or about April 28, 2013 by the Federal Bureau of Investigation (FBI) from seven different devices belonging to an unindicted co-conspirator in this case. The imaged material is currently in the custody of the FBI and consists of electronic media obtained from the following devices:

1. Western Digital HDD from Fujitsu S6520 Lifebook S Series laptop
2. Silver HP 16 GB USB flash media
3. White Toshiba TransMemory 8GB USB flash media
4. CD-R labeled “SOHOT” “Diablo II Expansion Set”
5. 4 GB Black Shinco Digital Recorder
6. 4 GB Sony SD card from Camera, model Casio EXZ-330
7. 500 GB Samsung HDD from an external HDD enclosure

The government seeks to produce this electronic media to the defendant in discovery; however, commingled in the source material that was imaged is an undetermined number of images depicting child pornography that cannot readily be segregated from the rest of the electronic media the government wishes to produce. Pursuant to Title 18, United States Code, Section 3509(m), in any criminal proceeding, any material containing child pornography shall remain in the care, custody, and control of either the government or the court. The statute

also prohibits a defendant from copying or otherwise reproducing any such material, as long as the government makes such material reasonably available to the defendant for examination at a government facility. *See* 18 U.S.C. §§ 3509(m)(1), (2)(A) and (B).

The Court understands that the government wishes to make the above-described discovery available to the defendant and his counsel in the Secure Compartmented Information Facility (SCIF) located in the U.S. District Courthouse in Alexandria that has been assigned to the defense for review of classified materials in this case. The Court further understands that this particular discovery can be provided by the FBI on a specially designated FBI computer that would remain secured in the SCIF for the defense's use in reviewing, but not copying or printing, said material. The defense may bookmark any documents relevant to this case that will then be placed on another medium for further review and reproduction by the defense, as needed. Once the initial discovery review is completed, the FBI computer will be returned to the government. The Court finds, for good cause shown, that the Courthouse SCIF assigned to counsel for defendant in this case constitutes a government facility within the meaning of 18 U.S.C. § 3509(m)(2)(B). Accordingly, it is hereby

ORDERED that, by close of business January 4, 2019, the FBI provide to the Classified Information Security Officer (CISO), for placement in the Courthouse SCIF assigned to counsel for the defendant in this case, a computer containing electronic media previously copied by the government on or about April 28, 2013 from the following seven devices belonging to an unindicted co-conspirator in this case:

1. Western Digital HDD from Fujitsu S6520 Lifebook S Series laptop
2. Silver HP 16 GB USB flash media
3. White Toshiba TransMemory 8GB USB flash media
4. CD-R labeled "SOHOT" "Diablo II Expansion Set"
5. 4 GB Black Shinco Digital Recorder
6. 4 GB Sony SD card from Camera, model Casio EXZ-330

7. 500 GB Samsung HDD from an external HDD enclosure

It is further

ORDERED that the computer provided by the FBI is solely for the use of counsel for defendant in reviewing, in consultation with the defendant as needed, the above-listed discovery; it is further

ORDERED that said FBI computer shall remain at all times secured in the SCIF and not be removed until such time as it is given by counsel for defendant to the CISO for return to the FBI.

T. S. Ellis III
United States District Judge

Date: _____
At Alexandria, Virginia

WE ASK FOR THIS

G. Zachary Terwilliger
United States Attorney

By: _____/s/
W. Neil Hammerstrom, Jr.
Assistant United States Attorney

SEEN AND AGREED:

/s/
Edward B. MacMahon, Jr., Esq.
Counsel for the Defendant

/s/
Nina J. Ginberg, Esq.
Counsel for the Defendant